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HON. MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC.; APPLE, INC.; eBAY, INC.;
FACEBOOK, INC.; GOOGLE INC.;
NETFLIX, INC.; OFFICE DEPOT, INC.;
OFFICEMAX INC.; STAPLES, INC.;
YAHOO! INC.; AND YOUTUBE, LLC,

Defendants.

Case No. 2:10-cv-01385-MJP

**STAPLES, INC.’S ANSWER TO FIRST
AMENDED COMPLAINT,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS**

JURY DEMAND

Defendant Staples, Inc. (“Staples”) answers the First Amended Complaint for Patent Infringement (“First Amended Complaint”) filed in this action by Plaintiff Interval Licensing LLC (“Interval” or “Plaintiff”) as follows:

1. Staples is without information or knowledge sufficient to admit or deny the allegations of paragraph 1 of the First Amended Complaint, and on that basis denies such allegations.

2-9. The allegations in paragraphs 2-9 are not asserted against Staples and therefore no answer is required.

10. Admitted.

1 11-12. The allegations in paragraphs 11-12 are not asserted against Staples and therefore
2 no answer is required.

3 13. Staples admits that this action purports to state a claim under the United States
4 patent laws and that such a claim, if proper, made by a party with sufficient standing, would arise
5 within the Court's subject matter jurisdiction. For purposes of this action only, Staples admits
6 that venue is proper in the United States District Court for the Western District of Washington.
7 Staples denies all further allegations directed against it in paragraph 13 of the First Amended
8 Complaint. No answer is required in response to the allegations not asserted against Staples.

9 14. Staples admits that Paul Allen and Bill Gates co-founded Microsoft Corporation
10 in 1975. Staples is without information or knowledge sufficient to admit or deny the remaining
11 allegations of paragraph 14 of the First Amended Complaint, and on that basis denies such
12 allegations.

13 15. Staples denies that Interval Research was ever one of the preeminent technology
14 firms. Staples is without information or knowledge sufficient to admit or deny the remaining
15 allegations of paragraph 15 of the First Amended Complaint, and on that basis denies such
16 allegations.

17 16. Staples is without information or knowledge sufficient to admit or deny the
18 allegations of paragraph 16 of the First Amended Complaint, and on that basis denies such
19 allegations.

20 17. Staples is without information or knowledge sufficient to admit or deny the
21 allegations of paragraph 17 of the First Amended Complaint, and on that basis denies such
22 allegations.

23 18. Staples is without information or knowledge sufficient to admit or deny the
24 allegations of paragraph 18 of the First Amended Complaint, and on that basis denies such
25 allegations.

1 19. Staples is without information or knowledge sufficient to admit or deny the
2 allegations of paragraph 19 of the First Amended Complaint, and on that basis denies such
3 allegations.

4 20. Staples admits that Exhibit 2 to the First Amended Complaint, on its face,
5 purports to be a copy of U.S. Patent No. 6,263,507 B1 (“’507 patent”), issued on July 17, 2001,
6 which is entitled “Browser for Use in Navigating a Body of Information, With Particular
7 Application to Browsing Information Represented By Audiovisual Data.” Staples denies that the
8 ’507 patent was “duly and legally issued for an invention.” Staples is without information or
9 knowledge sufficient to admit or deny the remaining allegations set forth in paragraph 20 of the
10 First Amended Complaint, and on that basis denies such allegations.

11 21-32. The allegations in paragraphs 21-32 are not asserted against Staples and therefore
12 no answer is required.

13 33. Staples admits that it operates the websites Staples.com, eway.com,
14 stapleslink.com and staples4government.com. Staples admits that Staples.com provides product
15 information to certain website visitors. Staples admits that some pages from eway.com and
16 stapleslink.com are not open to the general public. Staples denies the remaining allegations of
17 paragraph 33.

18 34-37. The allegations in paragraphs 34-37 are not asserted against Staples and therefore
19 no answer is required.

20 38. Staples denies the allegations asserted against it. The remaining allegations in
21 paragraph 38 are not asserted against Staples and therefore no answer is required.

22 39-58. The allegations in paragraphs 39-58 are not asserted against Staples and therefore
23 no answer is required.

24 59. Staples admits that Exhibit 5 to the First Amended Complaint, on its face,
25 purports to be a copy of U.S. Patent No. 6,757,682 B1 (“the ’682 patent”), issued June 29, 2004,
26 which is entitled “Alerting Users to Items of Current Interest.” Staples denies that the ’682
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1 patent was “duly and legally issued for an invention.” Staples is without information or
2 knowledge sufficient to admit or deny the remaining allegations set forth in paragraph 59 of the
3 First Amended Complaint, and on that basis denies such allegations.

4 60-70. The allegations in paragraphs 60-70 are not asserted against Staples and therefore
5 no answer is required.

6 71. Staples admits that it operates the websites Staples.com, eway.com,
7 stapleslink.com and staples4government.com, and that Staples.com provides product
8 recommendations to certain website visitors. Staples admits that some pages from eway.com
9 and stapleslink.com are not open to the general public. Staples admits that information regarding
10 certain activities of Staples.com website visitors can be used in determining recommendations to
11 provide to certain website visitors. Staples denies the remaining allegations of paragraph 71.

12 72-73. The allegations in paragraphs 72-73 are not asserted against Staples and therefore
13 no answer is required.

14 74. Staples denies the allegations directed at it. The remaining allegations in
15 paragraph 74 are not asserted against Staples and therefore no answer is required.

16 75. Paragraph 75 does not contain allegations and therefore no response is required.

17 **[THE FIRST AMENDED COMPLAINT’S] PRAYER FOR RELIEF**

18 Staples denies that Plaintiff is entitled to any of the relief sought in its prayer for relief
19 against Staples. Staples denies the alleged infringement of the ’507 or ’682 patents. The ’507
20 and ’682 patents are invalid. Plaintiff is not entitled to recover damages, injunctive relief, costs,
21 fees, interest, or any other type of recovery from Staples. Plaintiff’s prayer against Staples
22 should, therefore, be denied in its entirety and with prejudice, and Plaintiff should take nothing.

23 **AFFIRMATIVE AND OTHER DEFENSES**

24 Further answering the First Amended Complaint, Staples asserts the following defenses
25 without assuming any burden that it would not otherwise have. Staples reserves the right to
26 amend its answer with additional defenses as further information is obtained.

1 **COUNT TWO**

2 **DECLARATION OF NON-INFRINGEMENT OF THE '682 PATENT**

3 9. Staples incorporates and realleges the allegations of paragraphs 1-5 of these
4 counterclaims.

5 10. Staples has not infringed, literally or by the doctrine of equivalents, any claim of
6 the '682 patent asserted against it, and is not liable for infringement thereof.

7 11. To resolve the legal and factual questions raised by Plaintiff, and to afford
8 Staples relief from the uncertainty and controversy precipitated by Plaintiff's accusations
9 against it, Staples is entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
10 that Staples does not infringe and has not infringed any claim of the '682 patent asserted against
11 it.

12 **COUNT THREE**

13 **DECLARATION OF INVALIDITY OF THE '507 PATENT**

14 12. Staples incorporates and realleges the allegations of paragraphs 1-5 of these
15 counterclaims.

16 13. The claims of the '507 patent asserted against Staples are invalid under one or
17 more sections of Title 35 of the United States Code, including without limitation 35 U.S.C. §§
18 101, 102, 103, and 112.

19 14. To resolve the legal and factual questions raised by Plaintiff, and to afford
20 Staples relief from the uncertainty and controversy precipitated by Plaintiff's accusations
21 against it, Staples is entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
22 that the claims of the '507 patent asserted against it are invalid.

23 **COUNT FOUR**

24 **DECLARATION OF INVALIDITY OF THE '682 PATENT**

25 15. Staples incorporates and realleges the allegations of paragraphs 1-5 of these
26 counterclaims.

1 DATED this 14th day of January, 2011.

2 KLARQUIST SPARKMAN, LLP

3
4 By: /s/ Klaus H. Hamm

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CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel who are deemed to have consented to electronic service.

By: /s/ Klaus H. Hamm
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